

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Steven M. Maus,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 09-cv-628-PAC/JJK
)	
Brian N. Toder, and)	ORDER
Chestnut & Cambronne, P.A.,)	
)	
Defendants.)	

Before the Court is the Defendants' motion for default judgment and the Plaintiff's motion for relief from default.

The Plaintiff commenced this action on March 18, 2009. The defendants filed their Answer and Counterclaim on April 7, 2009. The Answer to the Counterclaim was due April 27, 2009. Defendants filed their motion for default on May 11, 2009. A number of judges were assigned to the case but recused themselves. The undersigned was assigned to the case on May 13, 2009. The pretrial scheduling order was entered on June 15, 2009. A settlement conference has been scheduled for July 13, 2009. Plaintiff filed a timely response to the motion for default. The Defendant submits that failure to respond was due to oversight and was not in any way intentional.

Default judgments are not favored. Trial on the merits is preferred. The Court has no reason not to believe the Plaintiff's explanation for failure to file a timely Answer to the Counterclaim. That being said, the Plaintiff was remiss in failing to file his Answer in a timely fashion and should take every precaution to see that he files timely responses as this case

proceeds and additional motions are filed.. Given the case is in its very early stages, the Court can see no prejudice to the Defendants in permitting a response.

The Court will excuse the failure to timely respond and permit the Plaintiff to file his Answer to the Counterclaim. Accordingly, the motion for default is **DENIED** and the motion for relief from default is **GRANTED**. Plaintiff's Answer will be due no later than July 10, 2009.

IT IS SO ORDERED.

Dated this 7th day of July, 2009.

/s/ Patrick A. Conmy
Patrick A. Conmy, Senior District Judge
United States District Court